

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is entered into as of November 13, 2018, by and between Jessie Hoff as p/n/f E. [REDACTED] R. [REDACTED] (the “Plaintiff”), and State of New Hampshire, Department of Health and Human Services, Richard Gilibert, and Shane Arsenault (the “Defendants”). The Plaintiff or the Defendants may be referred to herein as a “Party,” and collectively as the “Parties”).

WHEREAS, Plaintiff filed a complaint against the Defendants in the action pending in the United States District Court for the District of New Hampshire, styled as *J.H. p/n/f of E.R. v. State of New Hampshire, Richard Gilbert, And Shane Arsenault*, No. 17-00580-PB (D.N.H. 2017) (the “Action”), asserting a violation of E. [REDACTED] R. [REDACTED] civil rights, a violation of the Americans with Disabilities Act/Rehabilitation Act, and “supplemental state law claims against Gilibert and Arsenault.”

WHEREAS, on or about January 11, 2018, the Defendants filed an answer to the complaint in the Action and asserted affirmative defenses;

WHEREAS, the Defendants have denied and disputed, and continue to deny and dispute, any allegations of wrongdoing, damages, or liability in the Action;

WHEREAS, the Parties participated in a mediation session and, with the assistance of the mediator, reached the settlement that is the subject of this Agreement;

WHEREAS, without conceding the merit or lack of merit of any claim or defense or the existence of any liability whatsoever, the Parties wish to settle, compromise, and finally and forever resolve all matters, controversies, disputes, and claims that may exist between Plaintiffs and the Defendants relating to the subject matter of the Action, or the allegations therein,

including the released claims described herein, or any claims that could have been brought based on the subject matter of the Action.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **SETTLEMENT AMOUNT.** In consideration of the release and dismissal of the

Plaintiff's claims against the Defendants as set forth herein, the Stat shall make or cause to be

made a one-time, lump-sum payment of \$55,000.00 (the "Settlement Amount"), payable to

Nixon, Vogelman, Slawsky + Simoneau, P.A., Counsel for Plaintiff, Jessie Hoff as p/n/f.

2. **DISMISSAL OF THE ACTION.** Within three (3) business days after the

receipt of the payment by the Defendants of the Settlement Amount, Plaintiff will file in the

United States District Court for the District of New Hampshire, neither party docket markings

dismissing the Action with prejudice and without an award of fees, costs, or expenses to any

Party.

3. **GENERAL RELEASE OF ALL CLAIMS.**

(a) Plaintiff on his or her own behalf, and on behalf of his or her heirs, executors, administrators, successors, and assigns (the "Releasors"), hereby knowingly, voluntarily, fully, finally, and forever releases, relinquishes, settles, and discharges the Defendants, including any and all present or former employees, agents, representatives, servants, volunteers, independent contractors, officers, officials, directors, attorneys, insurers, indemnities, successors, and assigns of the State of New Hampshire, in their individual, business, and official capacities (the "State Released Parties") of and from any and all claims, allegations, rights, covenants, causes of action, duties, obligations, demands, actions, debts, sums of money, suits,

charges, contracts, agreements, promises, judgments, verdicts, costs, damages (including, but not limited to, compensatory, enhanced compensatory, and punitive damages), and liabilities of every nature, description, and kind, whether known or Unknown (as defined below), whether arising under federal, state, local, statutory, common law, or any other domestic or foreign law, rule, or regulation, that concern, arise out of, refer, or relate in any way to, or are based upon any of the allegations, events, incidents, facts, matters, or subject matters, occurrences, representations, statements, or omissions alleged, involved, set forth, or referred to in any complaint filed in the Action (the “Released Claims”), except that the Released Claims shall not include a claim to enforce this Agreement. Plaintiff represents and warrants to the Defendants that she has the right and authority to release, relinquish, settle, and discharge the Released Claims on behalf of the Releasors.

(b) Plaintiff understands and affirms that the release contemplated by this Agreement extends to claims that Plaintiff does not know or suspect to exist at the time of this release, which, if known, might have affected the decision to enter into the release (“Unknown” claims).

4. RESPONSIBILITY AND INDEMNIFICATION WITH RESPECT TO LIENS AND OTHER CLAIMS. Plaintiff acknowledges and agrees that she is responsible for any and all bills, liens, statements, rights of subrogation, or reimbursement for services rendered or payments made by any third party to either Plaintiff, including but not limited to legal, insurance providers, hospitals, medical and health care providers, Medicaid, Medicare, unemployment compensation, workers’ compensation, or any other services or payments, which exist, may exist, or in the future may exist, as a result of the Released Claims. In the event that any such third party asserts any claim against any State Released Party for outstanding bills,

liens, statements, rights of subrogation, or reimbursement for services rendered or payments made to either Plaintiff by such third party, as a result of the Released Claims, then Plaintiff agree to indemnify, defend, and hold harmless any State Released Party for any such claims. The Defendants represent that no Medicaid lien exists, and if one does exist, the State hereby waives said lien.

5. RESPONSIBILITY AND INDEMNIFICATION WITH RESPECT TO TAX TREATMENT. Plaintiff acknowledges and agrees that should the consideration set forth above, or any part thereof, be subject to any taxes, penalties, or interest, Plaintiff shall be solely responsible for the payment of all such taxes, penalties, or interest. Plaintiff further agrees to fully indemnify and defend the State Released Parties from any claims of any nature seeking recovery of any such taxes, penalties, or interest. Plaintiff further agrees that she will not assert, file, or make any claims against the State Released Parties for any such taxes, penalties, or interest, or for any costs, fees, or expenses that he or she may incur in connection with any disputes with the Internal Revenue Service and/or any other tax authority.

6. NO ADMISSION OF WRONGDOING. Nothing in this Agreement or the furnishing of the consideration for this Agreement shall be construed as an admission by the Defendants of any liability or unlawful conduct whatsoever. Plaintiff acknowledges that the Defendants have consistently denied, and continue to deny, any allegations of wrongdoing. This Agreement is not intended to be used and shall not be used as evidence or for any other purpose in any other action or proceeding other than to enforce the terms of this Agreement.

7. DISCLOSURE. Plaintiff acknowledges that this Agreement is subject to N.H. Rev. Stat. Ann. §507:17 and N.H. Rev. Stat. Ann. §91-A:4(VI), and may be made available as a matter of public record in accordance therewith.

8. ATTORNEYS' FEES AND EXPENSES. The Parties agree that the Settlement Amount constitutes the entire payment to be made in settlement of Plaintiff's claims against the Defendants in the Action. No Party shall seek to recover any additional amounts from any other Party, including for their attorneys' fees, costs, and expenses in connection with all matters related to the Action and its settlement.

9. CONSTRUCTION. In executing this Agreement, Plaintiff acknowledges that this Agreement is the result of negotiations in good faith and at arm's length between Plaintiff and the Defendants. Plaintiff further acknowledges that she has executed this Agreement knowingly, voluntarily, and without undue influence or duress. Accordingly, the terms, provisions, and conditions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, without application of any rule of interpretation or construction providing that ambiguous or conflicting terms, conditions, or provisions shall be interpreted against the Party whose legal counsel prepared the executed version or any prior drafts of the agreement.

10. ENTIRE AGREEMENT. The Parties acknowledge and agree that this Agreement constitutes the full and complete agreement between and among the Parties with respect to the matters encompassed herein and supersedes all previous agreements, promises, proposals, representations, understandings, and negotiations, whether written or oral, between and among the Parties respecting the matters encompassed herein.

11. AUTHORITY. Plaintiff represents and warrants that (a) she has the sole right and exclusive authority to execute this Agreement, and (b) she has not sold, assigned, transferred, or otherwise conveyed any of the claims, demands, actions, suits, debts, causes of action, or liabilities referred to in this Agreement. Plaintiff acknowledges that she has carefully

read this Agreement, knows and understands its contents, and has had the opportunity to consult with counsel of her choice concerning the legal consequences of this Agreement. Plaintiff signs this Agreement voluntarily and freely, without duress and as his or her own free act. No promise or inducement that is not expressed in this Agreement has been made to Plaintiff. Plaintiff has not relied upon the advice or representations of the Defendants or any representative thereof in executing this Agreement.

12. **BINDING AGREEMENT.** This Agreement is binding upon and inures to the benefit of the Parties, their successors, and assigns. Each person signing this Agreement or any portion thereof on behalf of any Party hereby warrants and represents that such person expressly has been authorized to execute this Agreement on behalf of such Party as a document legally binding on such Party, and that such person has full authority to take all such reasonable, necessary, and appropriate actions that may be required or permitted to be taken pursuant to the Agreement to effectuate its terms.

13. **MODIFICATION.** This Agreement shall not be altered, amended, modified, or rescinded except by an instrument in writing signed by each of the Parties, and specifically referencing this Agreement.

14. **SIGNATURES IN COUNTERPART.** This Agreement may be executed simultaneously in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. Signatures by facsimile or other electronic imaging shall be deemed to constitute original signatures.

15. **GOVERNING LAW/JURISDICTION.** This Agreement, and any disputes related thereto, shall be governed by the law of the State of New Hampshire, and the Parties

expressly submit any claim arising therefrom to the exclusive jurisdiction of the Superior Court of the State of New Hampshire.

16. **HEADINGS.** The headings herein are included for the purpose of convenience only and are not meant to have legal effect. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context indicates is appropriate.

ACCEPTED AND AGREED:

Jessie Hoff as p/c/f Plaintiff
gjt

Date: 11/13/18

State of New Hampshire, Department of Health and Human Services, Richard Gilibert, and Shane Arsenault

The Office of the Attorney General, pursuant to N.H. Rev. Stat. Ann. § 99-D:2

By: F. F.
Francis Fredericks

Date: 11/13/18